

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

B&G FOODS NORTH AMERICA, INC.,

No. 2:20-cv-0526 KJM DB

Plaintiff,

v.

KIM EMBRY AND ENVIRONMENTAL
HEALTH ADVOCATES, INC.,

ORDER

Defendant.

On August 10, 2023, defendant filed a motion for protective order. (ECF No. 104.) That same day plaintiff filed a motion to compel. (ECF No. 106.) Both motions are noticed for hearing before the undersigned on August 25, 2023. Review of the parties' filings finds that defendant has failed to comply with the Local Rules with respect to each motion.

In this regard, defendant's motion for a protective order fails to comply with Local Rule 251(a) which requires notice of "at least twenty-one (21) days" prior to the hearing of the motion. Local Rule 251(a) does allow for the hearing of a discovery dispute on only seven days' notice where the parties file a Joint Statement re Discovery Disagreement "concurrently" with the notice of motion, but the parties are not required to do so and that did not happen here. Instead, defendant simply filed "Defendant's Statement Re: Discovery." (ECF No. 105.)

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1 No such statement is contemplated by the Local Rules. Moreover, defendant's motion
2 seeks a stay of discovery pending resolution of defendant's motion to dismiss pending before the
3 assigned District Judge. (*Id.* at 1.) However, the assigned District Judge has issued a schedule in
4 this action permitting discovery. (ECF No. 87.) In this regard, the decision of whether to stay
5 discovery is not for the undersigned.

6 With respect to plaintiff's motion to compel, the motion asserts that defendant has failed
7 to respond to written discovery and failed to appear for depositions. (ECF No. 106 at 5.) Local
8 Rule 251(e) provides that "when there has been a complete and total failure to respond to a
9 discovery request" a party may bring a motion on fourteen days' notice and a Joint Statement is
10 not required. Instead, the "responding party shall file a response . . . not later than seven days
11 before the hearing date." (*Id.*) Here, defendant has not filed a response to plaintiff's motion.

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. Defendant's August 10, 2023 motion for protective order (ECF No. 104) is denied and
14 the August 25, 2023 hearing is vacated;

15 2. The August 25, 203 hearing of hearing of plaintiff's motion to compel (ECF No. 106)
16 is continued to **October 13, 2023**;

17 3. Within fourteen days of the date of this order defendant shall show cause in writing as
18 to why defendant should not be sanctioned for failing to comply with the Local Rules;

19 4. Within 21 days of the date of this order the parties shall meet and confer in compliance
20 with the Local Rules and the undersigned's Standard Information; and

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1 5. On or before **October 6, 2023**, the parties shall file either a withdrawal of the motion
2 to compel or a Joint Statement re Discovery Disagreement.¹

3 Dated: August 23, 2023



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5 DEBORAH BARNES
6 UNITED STATES MAGISTRATE JUDGE
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27 ¹ The parties shall ensure that the Joint Statement complies with the Local Rules and the
28 undersigned's Standard Information, available at the court's web page at
<http://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/united-states-magistrate-judge-deborah-barnes-db>.